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USWEST

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August 20, 1997

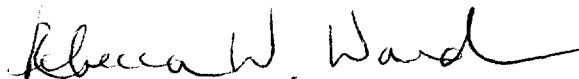
Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Enclosed are an original, nine copies, and a diskette copy of U S WEST's Reply Comments to July 23, 1997 Comments in response to the Notice of Inquiry in CS 97-141 released June 6, 1997. Please date stamp and return the duplicate copy also provided with this filing.

Should you have any questions regarding the diskette, please call me at the above number.

Sincerely,



Rebecca W. Ward

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

AUG 26 1997

In the Matter of)
) CS Docket No. 97-141
Annual Assessment of the Status of)
Competition In the Market for the)
Delivery of Video Programming)

REPLY COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") herein submits these reply comments regarding the Federal Communications Commission's ("Commission") Fourth Annual Report to Congress on the status of competition in the multichannel video programming market.¹ In its comments, U S WEST provided detailed examples of existing competition in areas where MediaOne,² a subsidiary of U S WEST Media Group, Inc. ("U S WEST Media Group") and the nation's third largest multiple system operator ("MSO"), and U S WEST Communications Group, Inc. ("U S WEST Communications Group") provide cable television service. Competition in the video marketplace arises from multiple sources including: direct broadcast satellite services ("DBS"), incumbent local exchange carriers ("ILEC"), microwave-based wireless cable operators ("MMDS"), private cable or satellite master antenna television providers ("SMATV"), and open video system ("OVS") providers. It is

¹ In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 97-141, Notice of Inquiry, FCC 97-194, rel. June 6, 1997. Comments were filed July 23, 1997.

² Formerly Continental Cablevision, Inc.

notable that each of these segments in the video provider marketplace were represented by comments filed in this proceeding.

While U S WEST's comments described the variety of competitors it has encountered in the video programming marketplace, many of the competitors focused their comments on perceived deficiencies in various rules and regulations which currently govern the multichannel video programming industry. A number of commenters raised issues with the existing program access provisions as provided by Section 628 of the Cable Act and Section 76.1000 et seq. of the Commission's Rules.³ Several commenters called for the Commission to broaden the scope of the current program access rules to include programming delivered via non-satellite (terrestrial) means. U S WEST believes that elimination of the terrestrial delivery exception is contrary to the public interest and removes the primary incentive for video providers to develop strong local programming. These reply comments will focus on the importance of maintaining the current exception in order to support quality local programming.

I. NO EVIDENCE HAS BEEN PROVIDED WHICH SHOWS THAT THE TERRESTRIAL DELIVERY EXCEPTION TO THE PROGRAM ACCESS RULES HAS IMPEDED COMPETITION IN ANY WAY

A number of commenters, including Ameritech New Media, Bell Atlantic/NYNEX, BellSouth, and the Wireless Cable Association,⁴ have called for

³ 47 U.S.C. § 548 and 47 C.F.R. § 76.1000-4.

⁴ Ameritech New Media, Inc. at 18-19; Bell Atlantic and the NYNEX Telephone Companies at 6-7; BellSouth Corporation, BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. at 14-15; The Wireless Cable Association International, Inc. at 11.

the elimination of the terrestrial delivery exception to the current program access rules. While several have asserted that the availability of wireline delivery for video programming will impede competition by allowing cable operators to maintain program exclusivity, none have provided any actual evidence of this harm occurring in the marketplace. In fact, as HBO notes in its comments, in the five years that the program access rules have been in place, there has not been a single adverse pricing decision issued by the Commission and there have been only two cases where the Commission has been required to rule upon a refusal to sell complaint.⁵ The de minimus number of true program access disputes over a five-year period provides demonstrable evidence that the goal of nondiscrimination in program access has already been achieved.

Assertions of existing competitive harm from the terrestrial delivery of video programming are baseless, while allegations as to future harm are speculative at best. If the number of disputes which have occurred over program access to satellite delivered programming in the past is any indication, then significant future harm appears to be highly unlikely. The Commission should refrain from taking any action which would eliminate the terrestrial delivery exception until such claims can be demonstrated by actual evidence of harm. It would be significantly premature and potentially detrimental to the production of quality local programming for the Commission to recommend such material changes in the program access provisions at this time.

⁵ Home Box Office at 5-6.

II. CONGRESS RECOGNIZED THE IMPORTANCE OF DIFFERENTIATED LOCAL PROGRAMMING WHEN IT ENACTED THE PROGRAM ACCESS PROVISIONS IN THE 1992 CABLE ACT

When it enacted the 1992 Cable Act, and “commoditized” most programming owned by vertically integrated cable operators, Congress recognized that cable operators, and other multichannel video programming providers (“MVPD”), should be able to differentiate their service offerings from other MVPDs through the creation of strong local programming. The production and distribution of local programming has been recognized by both Congress and the Commission as providing an important source of information within individual communities. Local programming provides an important outlet for the discussion of community-specific topics and a diverse source for local news and information.

The Commission previously recognized the public interest value of local and regional program diversity when it granted the exclusivity petition of New England Cable News (“NECN”).⁶ As the Commission noted in that case, one of the statutory factors in evaluating a petition for exclusivity is its effect on diversity in the programming market. There the Commission stated, “Here the increased diversity provided by additional news, public affairs, informational and children’s programming weighs favorably in the public interest analysis required under the statute.”⁷

⁶ In the Matter of NEW ENGLAND CABLE NEWS, Petition for Public Interest Determination Under 47 C.F.R. §76.1002(c)(4) Relating to Exclusive Distribution of New England Cable News, Memorandum Opinion and Order, 9 FCC Rcd. 3231 (1994)(“NECN Waiver Order”).

⁷ Id. at 3237 ¶ 42.

MediaOne has invested heavily in the origination of creative and dynamic local programming. This investment has taken many different forms in many different communities.⁸ MediaOne currently has more than 150 local origination studios around the country in the communities it serves. The company produces more than 78,000 hours of original programming a year for its subscribers in local communities, with each studio averaging 10 original hours of programming a week. Television coverage of local news, sports, civic programs, and community events provide a unique window on small towns that would never exist without MediaOne.

Because of its continued support and investment in local programming, MediaOne has achieved local and national recognition for its work in this area. MediaOne is generally recognized as an industry leader in local cable news operations. MediaOne's cable system in Southeastern Massachusetts has been providing daily and weekly local news programs since 1981 -- longer than any other system operator in the business. This local news service is currently available to more than 70,000 homes in the area. On an enterprise-wide basis, MediaOne produces daily local news programs in eight or more systems in California, Florida, Massachusetts, and New York. A large number of other systems offer updated weekly community news programs.

There are many other examples of MediaOne's commitment to providing beneficial local programming across the country. Some of these examples include:

⁸ For example, MediaOne's New England region alone invests more than \$11 million a year on local origination programming and its capital investment in local origination studios (not including education or government access studios) exceeds \$25 million.

- MediaOne's "Commonwealth Collaborative Network" provides extended distribution of quality local programming content such as local documentaries, regional sports, educational initiatives, entertainment and information programming to a cluster of approximately 30 Massachusetts communities interconnected by one master headend facility through MediaOne's advanced fiber optic network. The Commonwealth Collaborative Network showcases some of the best local programs that are produced by studios located within the 30 communities and has a viewing audience of more than 245,000 customers. Programming is aired in four to six hour blocks four times a week. The variety and type of programming appeal to residents in a broader geographic area beyond just a single municipality. The following provides additional details on the Commonwealth Collaborative Network's programming content:
 - Local sports. Recently, MediaOne produced and cablecast the Shriners' All Star High School Football Classic. The Shriners is a non-profit charitable organization involved in supporting community needs. Had MediaOne not stepped in, the Football Classic would not have been cablecast to these communities because the regional sports network that had cablecasted it in prior years declined to do so this year. Many of the participants in the games are members of the communities that are a part of the Commonwealth Collaborative Network.
 - Music programming such as the nationally ranked Lowell Folk Festival.
 - Talk shows like the "Bookcase" that features local and national authors.
 - Statewide produced programming. For example, MediaOne produces a New England Cable Television Association Public Service Award winning series, "Issues & Answers," in cooperation with State Attorney General Scott Harshbarger. The program addresses issues of interest to Massachusetts' consumers such as the new tobacco settlement, teen drinking and driving, casino gambling, domestic violence, the HMO industry controversy and victim assistance for consumer fraud.
 - Election programming.
 - Informative programming. MediaOne's Local CableACE nominated series, "Paws For Adoption" is also cablecast every month on the Commonwealth Collaborative Network. This program features pet care and the animals the Massachusetts' Society for the Prevention of Cruelty to Animals has available for adoption.

- MediaOne's Hialeah, Florida operation produces *Miavision*, a popular and highly-viewed Spanish-language local origination channel. In addition to programs of more general interest, *Miavision* also supports one of the most highly decorated cable news operations in the country. Its nightly Spanish language local news program has captured more Local CableAce awards than any other local cable news program produced by cable operators.
- In Atlanta, Georgia, MediaOne's hybrid-fiber-coax ("HFC") network delivers community awareness programming, sports coverage and, through a partnership with the local FOX affiliate, local news coverage to the more than 500,000 customers in the region.
- In its Ohio service areas, MediaOne operates a local origination channel called the "MediaOne Network." Programming includes AAA hockey and university games as well as important public affairs programming.

In each of these cases, MediaOne has provided the creativity and capital to fund the development of these local programs. Such programs would not exist but for MediaOne's commitment to these communities and the people that live in them. It is important that the Commission not recommend action which will have the effect of removing incentives for MediaOne and other cable operators to invest time and money in these local efforts.

Surveys demonstrate that customers place a high value on good quality locally produced programming. In its New England region, an area representing more than 1.5 million customers, MediaOne conducted a survey in September 1996 to determine customer opinion of local programming. Of those customers who responded to the survey, 76% were aware of the local programming channels and said that they valued the programming. More than one-half had watched local origination programs within the last month. MediaOne has also conducted professional customer surveys for more than a decade in Lowell, Massachusetts

where MediaOne delivers a nightly newscast. Of the subscribers who responded, 83% watch the local news at least twice a week and 100% said that they have watched the channel at least once during the year for information or special events. In Wappinger Falls, New York the weekly come rating for the MediaOne News program is 56. In addition, 75% of subscribers watch MediaOne News more than once a week. In a recent survey conducted in Corona, California more than 70% of customers are aware of and have watched live coverage of the City Council meeting. In that survey, 83% rated overall programming service as good to excellent.

Obviously, quality and value are the keys to a positive perception of local programming by customers. MediaOne's financial commitment to the production, promotion, and distribution of superior local programming currently enables it to differentiate itself amongst competing video providers. If the incentives to provide such services were removed by the Commission, customers would lose what they consider to be a valuable programming service. MediaOne would likely be forced to cut back on its current efforts in local programming and additionally shelve plans on the drawing board for new services. Competing MVPDs can best serve the public interest in their local communities through the creation of additional and unique local programming services. Elimination of the terrestrial delivery exception to the current program access laws will not promote additional local programming development. On the contrary, such action will serve as a disincentive for incumbent providers. This is neither the result that Congress intended when it enacted the program access rules nor should it be the result of action recommended by the Commission in this or any other proceeding.

III. SWITCHING PROGRAMMING DISTRIBUTION FROM SATELLITE TO TERRESTRIAL DELIVERY IS NOT NECESSARILY EVASIVE OF THE EXCLUSIVITY RULES

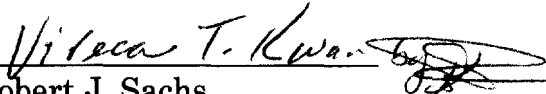
Because of its targeted distribution, local programming is almost always delivered via terrestrial means. For the most part, it is neither economical nor is it necessary to provide local programming via satellite. In some cases, the economics of program distribution change over time and it simply makes sense to switch delivery mechanisms. Such is the case with the switch to terrestrial delivery made two years ago by NECN. As noted previously, in the NECN Waiver Order, the Commission granted a waiver to NECN permitting the start-up news channel the right to maintain program exclusivity for a period of seven years. At the time, NECN required a waiver because it was delivered via satellite.

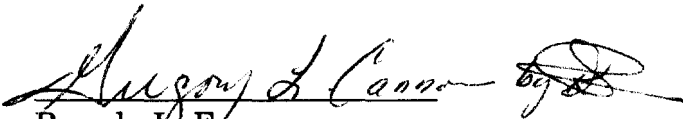
In 1995, NECN switched from satellite distribution by GE Americom to terrestrial and common carrier microwave distribution at a savings of approximately \$500,000 per year, representing about a one-third reduction in its previous distribution costs. Obviously, in the case of NECN, the reason for switching distribution mechanisms from satellite to terrestrial (primarily HFC) was purely cost based, not an attempt to evade the program access rules where it had already been granted a waiver. The Commission should carefully review undocumented assertions that cable operators are using terrestrial delivery to evade the existing program access rules. As U S WEST noted previously, no party has provided any evidence that the terrestrial delivery of programming is driven by anything other than proper business considerations.

IV. CONCLUSION

Commenters have failed to provide any evidence to show that the terrestrial delivery exception to the program access rules has led to any anti-competitive abuses by cable operators. The public policy reasons for encouraging the production of unique local programming are as strong today as they were in 1992 when Congress enacted the program access provisions. The public interest is best served by encouraging all video programming providers to supply some measure of unique programming.

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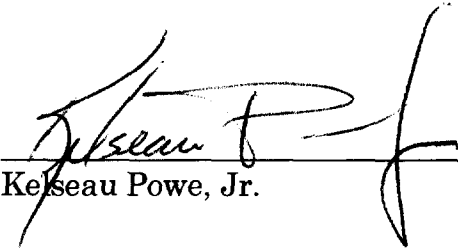
Its Attorneys

Of Counsel,
Dan L. Poole

August 20, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 20th day of August, 1997,
I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.***
to be served via United States mail, postage pre-paid, upon the persons listed on the
attached service list.**


Kelseau Powe, Jr.

*Pursuant to the June 6, 1997 Notice of Inquiry (FCC 97-194), an electronic version of this filing is submitted today to the Office of the Secretary on a 3x5 inch diskette, along with a cover letter.

**Served via hand-delivery.

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